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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

PAUL GRILLO, on behalf of himself and all others similarly situated, and as an aggrieved employee pursuant to PAGA,

Plaintiff,

vs.

KEY ENERGY SERVICES, LLC, and DOES 1-100, inclusive,

Defendants.

MANUEL ZARAGOZA, individually, and on behalf of other members of the general public similarly situated, and as an aggrieved employee pursuant to the Private Attorneys General Act ("PAGA"),

Plaintiff,

vs.

KEY ENERGY SERVICES CALIFORNIA, INC., a Texas corporation; KEY ENERGY SERVICES, LLC, a Texas limited liability company; and DOES 1 through 10, inclusive,

Defendants.

Lead Case No.: 2:14-cv-00881-AB
Consolidated with: 2:14-cv-03554-AB

NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

Date: September 22, 2017
Time: 10:00 a.m.
Place: Courtroom 7B

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TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 22, 2017 at 10:00 a.m., or as soon thereafter as counsel may be heard, in Courtroom 7B of the above-captioned court, located at 350 W. First Street, Los Angeles, California 90012, the Honorable André Birotte Jr. presiding, Plaintiffs Manuel Zaragoza and Paul Grillo will, and hereby do, move this Court for entry of an order and judgment granting final approval of the class action settlement and all agreed-upon terms therein. This Motion, unopposed by Defendants Key Energy Services California, Inc., and Key Energy Services, LLC, seeks final approval of: (1) the Joint Stipulation of Class Action Settlement and Release; (2) settlement payments to Participating Class Members; (3) a payment to the California Labor and Workforce Development Agency; and (4) and costs/expenses to the settlement administrator, CPT Group, Inc.

This Motion is based upon: (1) this Notice of Motion and Motion; (2) the Memorandum of Points and Authorities in Support of Motion for Final Approval of Class Action Settlement; (3) the Declaration of Raul Perez; (4) the Declaration of Tarus Dancy on behalf of CPT Group, Inc.; (5) the [Proposed] Order Granting Final Approval of the Class Action Settlement and Judgment; (6) the records, pleadings, and papers filed in this action; and (7) upon such other documentary and/or oral evidence as may be presented to the Court at the hearing.

Dated: August 11, 2017

Respectfully submitted,

By: /s/ Raul Perez

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Melissa Grant
Arnab Banerjee
Capstone Law APC

Marcus J. Bradley
Kiley L. Grombacher
Bradley / Grombacher, LLP

Attorneys for Plaintiffs and the Class

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I. INTRODUCTION

On May 22, 2017, the Court granted preliminary approval of the Joint Stipulation of Class Action Settlement and Release[1] and approved distribution of the Notice of Class Action Settlement ("Class Notice") to all Class Members. Class Members were given 30 days to opt out or object to the Settlement ("Response Deadline"). Now that the Response Deadline has passed, Plaintiffs Manuel Zaragoza and Paul Grillo are pleased to report that: (1) only 3 Class Members opted out of the Settlement Class (0.15% of the Settlement Class); (2) only one Participating Class Members objected to the Settlement; (3) the **entire Net Settlement Amount will be disbursed to all 2,013 Participating Class Members**; and (4) the average payment to Participating Class Members is approximately $890, and the highest is approximately $2,230 (Declaration of Tarus Dancy ["Dancy Decl."] ¶¶ 7-9.)

Plaintiffs now seek final approval of this Settlement with Defendants Key Energy Services California, Inc., and Key Energy Services, LLC ("Defendants") (collectively with Plaintiffs, the "Parties"). The basic terms of the Settlement provide for the following:

(1) A Settlement Class defined as: All persons who were employed by Defendants in the State of California as non-exempt production employees (i.e., excluding corporate administrative employees), at any time during the period from June 13, 2009 to February 28, 2017.

(2) A Class Settlement Amount of $3,000,000. The Class Settlement Amount includes:

(a) A Net Settlement Amount (calculated as the Class Settlement Amount minus the requested Attorneys' Fees and Costs, Settlement Administration Costs, the payment to the California Labor and

[1] Hereinafter, "Settlement" or "Settlement Agreement." Unless indicated otherwise, all capitalized terms used herein have the same meaning as those defined by the Settlement Agreement.

Workforce Development Agency ["LWDA"], and the Class Representative Enhancement Payments), which will be allocated to all Class Members on a pro-rata basis according to the number of Pay Periods each Class Member worked during the Class Period. **The Entire Net Settlement Amount will be paid to all Class Members who do not opt out of the Settlement Class, and without the need to submit claims for payment.**

(b) Attorneys' fees not to exceed one-third of the Class Settlement Amount (or $1,000,000) and litigation costs and expenses not to exceed $150,000, to Capstone Law APC ("Lead Class Counsel"), Bradley/Grombacher LLP, and Law Offices of Santos Gomez (collectively, "Class Counsel").

(c) Settlement Administration Costs of $25,000 to be paid to Court-appointed settlement administrator, CPT Group, Inc.

(d) A $15,000 payment to the LWDA pursuant to the Labor Code Private Attorneys General Act of 2004 ("PAGA").

(e) Class Representative Enhancement Payments of $10,000, each, to Manuel Zaragoza and Paul Grillo for their services on behalf of the Settlement Class and for agreeing to broader releases than those required of other Class Members.

An objective evaluation of the Settlement confirms that the relief negotiated on the Class' behalf is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at arm's length with helpful guidance from Jeffrey Ross, an experienced and well-respected class action mediator, and the Settlement confers substantial benefits to Class Members. The relief offered by the Settlement is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class

certification being denied or of Defendants prevailing at trial.

Accordingly, given the Settlement's favorable terms and the manner in which these terms were negotiated and received by Class Members, Plaintiffs respectfully request that the Court grant this Motion for Final Approval of the Settlement Agreement and retain jurisdiction to enforce the Settlement.

II. FACTS AND PROCEDURE

A. Overview of the Litigation

This consolidated action is comprised of two related cases: (1) *Manuel Zaragoza v. Key Energy Services LLC, et al.*, C.D. Cal. Case No. 14-cv-03554 (filed in Los Angeles County Superior Court on June 13, 2013); and (2) *Paul Grillo v. Key Energy Services LLC, et al.*, C.D. Cal. Case No. 14-cv-00881 (filed in Santa Barbara County Superior Court on Nov. 22, 2013). (Declaration of Raul Perez ["Perez Decl."] ¶ 2.)

Plaintiff Manuel Zaragoza was employed as a non-exempt "Floorhand" from approximately May 2011 to August 2011, and again from August 2012 to February of 2013, on Defendants' Bakersfield, California, onshore oil rig. Plaintiff Paul Grillo was also employed as a "Floorhand" at various onshore oil rigs in Kern and Santa Barbara Counties from approximately April 2013 through September 2013, when he was laid off. Defendants rehired Plaintiff Grillo in or about September 2013, as a non-exempt hourly-paid "Swamper" and "BOP Tool Tech" on onshore oil rigs. (Perez Decl. ¶ 3.)

The operative First Amended Consolidated Complaint alleges class claims for violations of California law regarding meal and rest periods, unpaid off-the-clock hours worked, overtime pay, minimum wages, expense reimbursement, and wage statement violations, as well as derivative claims for the late payment of wages, inaccurate wage statements, and unlawful and unfair business practices under California Business & Professions Code section 17200, *et seq*. The First Amended Consolidated Complaint also seeks civil penalties under the Private Attorneys General Act of 2004 ("PAGA") codified at California Labor Code section 2698, *et seq.* (Perez Decl. ¶ 4.)

On December 22, 2015 the Court certified Plaintiffs' Business Expense and

Brinker Rest Break subclasses. (Perez Decl. ¶ 5.) Thereafter, on February 2, 2016, Plaintiffs moved to amend the class certification order on the following grounds: (1) the Court should also have certified the derivative claims relating to the certified Business Expense and *Brinker* Break subclasses, such as claims under Labor Code sections 201 and 202 (failure to pay wages upon discharge); section 226 (failure to provide accurate wage statements); and California Business and Professions Code section 17200, *et seq.*; (2) the Court erred in declining to certify the Wage Statement Subclass by failing to consider evidence that wage statements contained uniform violations and by applying a person-by-person analysis rather than a "reasonable person" standard; and (3) the Court erred in declining to certify the Regular Rate Subclass by failing to consider that the software program that calculates employees' overtime necessarily does not engage in an employee-by employee analysis. (Perez Decl. ¶ 6.)

On July 6, 2016, the Court granted Plaintiffs' motion in its entirety. (Perez Decl. ¶ 7.)

B. The Parties Settled After Mediation

On June 27, 2016, the Parties participated in a full day of mediation with Jeffrey Ross, an experienced and well-respected mediator of wage and hour class actions. Mr. Ross helped to manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. Although the parties did not settle at mediation, they continued their settlement negotiations with Mr. Ross' continuing guidance. Following several months of ongoing negotiations, the Parties came to an agreement on the principal terms of a class action settlement. The complete and final terms of the Parties' settlement are now set forth in the Joint Stipulation of Class Action Settlement and Release. At all times, the Parties' negotiations were adversarial and non-collusive, and the Settlement thus constitutes a fair, adequate, and reasonable compromise of the claims at issue. (Perez Decl. ¶ 12.)

C. The Proposed Settlement Fully Resolves Plaintiffs' Claims

1. Composition of the Settlement Class

The Settlement Class consists all persons who were employed by Defendants in the State of California as non-exempt production employees (i.e., excluding corporate administrative employees), at any time during the period from June 13, 2009 to February 28, 2017. (Settlement Agreement ¶ 5.)

2. Settlement Consideration

Plaintiffs and Defendants have agreed to settle all class claims and representative claims alleged in the Actions in exchange for the Class Settlement Amount of $3,000,000. The Class Settlement Amount includes: (1) settlement payments to Participating Class Members; (2) $1,000,000 in attorneys' fees and up to $150,000 in litigation costs/expenses to Class Counsel; (3) a $15,000 payment to the LWDA; (4) Settlement Administration Costs of approximately $25,000; and (5) Class Representative Enhancement Payments of up to $10,000, each, to Manuel Zaragoza and Paul Grillo for their services on behalf of the Settlement Class. (Settlement Agreement ¶¶ 2, 7, 8, 13, 26.)

Subject to the Court approving Attorneys' Fees and Costs, the payment to the LWDA, Settlement Administration Costs, and the Class Representative Enhancement Payments, the Net Settlement Amount will be distributed to all Participating Class Members. Because the Class Settlement Amount is non-reversionary, 100% of the Net Settlement Amount will be paid to Participating Class Members, and without the need to submit claims for payment. (*Id.* at ¶ 34.)

3. Formula for Calculating Settlement Payments

Each Class Member's share of the Net Settlement Amount will be proportional to the number of Pay Periods he or she worked during the Class Period. (Settlement Agreement ¶¶ 19, 34.) Individual Settlement Payments will be calculated as follows:

- Defendants will calculate the total number of Pay Periods worked by each Class Member during the Class Period and the aggregate total number of Pay Periods worked by all Class Members during the Class Period.

- To determine each Class Member's estimated "Individual Settlement Payment," the Settlement Administrator will use the following formula: The Net Settlement Amount will be divided by the aggregate total number of Pay Periods, resulting in the "Pay Period Value." Each Class Member's "Individual Settlement Payment" will be calculated by multiplying each individual Class Member's total number of Pay Periods by the Pay Period Value.

- The Individual Settlement Payment will be reduced by any required deductions for each Participating Class Members as specifically set forth herein, including employee-side tax withholdings or deductions.

- The entire Net Settlement Amount will be disbursed to all Class Members who do not submit timely and valid Requests for Exclusion. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement Payment for each Participating Class Member according to the number of Pay Periods worked, so that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Amount.

(Settlement Agreement ¶ 34.)

4. Release by the Settlement Class

In exchange for the Class Settlement Amount, Plaintiffs and Class Members who do not opt out will agree to release the Released Parties for the Released Claims, which are defined as:

> All claims, rights, suits, penalties, demands, liabilities, damages, losses, and causes of action which were brought in the First Amended Consolidated Complaint and which could have been asserted in the First Amended Consolidated Complaint arising from, or related to, the same set of operative facts set forth in the First Amended Consolidated Complaint, including: (i) all claims for unpaid overtime; (ii) all claims for meal and rest period violations; (iii) all claims for unpaid minimum wages; (iv) all claims for the failure to timely pay wages upon termination; (v) all claims for the failure to timely pay wages during employment; (vi) all claims for wage statement violations; (vii) all claims to reimburse employees for necessary business expenses; and (viii) all claims asserted through California Business & Professions Code §§ 17200, et seq., and California Labor Code §§ 2698, et seq. based on the preceding claims.

(Settlement Agreement ¶ 22.) The Released Claims are those that accrued during the period from June 13, 2009 to February 28, 2017. (*Id.*)

D. The Notice and Settlement Administration Process Were Completed Pursuant to the Court's Preliminary Approval Order

As authorized by the Court's Order preliminarily approving the Settlement Agreement, the Parties engaged CPT to provide settlement administration services.

(Dancy Decl. ¶ 2.) CPT's duties have included: (1) printing and mailing Class Notices, (2) calculating settlement payments (this will include distribution of funds and tax-reporting following final approval), and (3) answering questions from Class Members. (*Id.*)

On May 24, 2017, CPT received the Class Notice prepared jointly by Class Counsel and counsel for Defendants and approved by the Court. (Dancy Decl. ¶ 3.) The Class Notice summarized the Settlement's principal terms, provided Class Members with an estimate of how much they would be paid if the Settlement received final approval, and advised Class Members about how to opt out of the Settlement and how to object. (Dancy Decl., Ex. A.)

Separately, counsel for Defendants provided CPT with a mailing list (the "Class List"), which included each Class Member's full name, last known address, Social Security Number, and information necessary to calculate payments. (Dancy Decl. ¶ 4.) The mailing addresses contained in the Class List were processed and updated using the National Change of Address Database maintained by the U.S. Postal Service. (*Id.* at ¶ 5.) On June 27, 2017, CPT mailed Class Notices to Class Members via First-Class U.S. mail. (*Id.*) Class Members were given until July 27, 2017 to opt out or object to the Settlement. Plaintiffs are pleased to report that less than 0.15% of the Settlement Class opted out and only one Class Member objected to the Settlement. (*Id.* at ¶¶ 8-9.)

III. ARGUMENT

A. The Standard for Final Approval Has Been Met

A class action may only be settled, dismissed, or compromised with the Court's approval. Fed. R. Civ. Proc. 23(e). The process for court approval of a class action settlement is comprised of three principal stages:

Preliminary Approval: The proposed settlement agreement is preliminarily reviewed by the Court for fairness, adequacy, and reasonableness. If the Court believes the settlement falls within the range of reasonableness, such that proceeding to a formal fairness hearing is warranted, it orders notice of the settlement disseminated to the class.

See Manual for Complex Litigation § 21.632 (4th ed. 2004).

Class Notice: Notice of the settlement is disseminated to the class, giving class members an opportunity to object to the settlement's terms or preserve their right to bring an individual action by opting out. *See id.*, § 21.633.

Final Approval: A formal fairness or final-approval hearing is held by the Court, at which class members can be heard regarding the settlement, and at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement is presented.[2] Following the hearing, the Court decides whether to approve the settlement and enter a final order and judgment. *See id.*, § 21.634.

The first two steps have been completed. The Court has preliminarily reviewed the proposed settlement for fairness and found it to be within the range of reasonableness meriting court approval. (*See* Order Granting Preliminary Approval of Class Settlement, Dkt. No. 118.) In addition, the Settlement Administrator has notified Class Members of the proposed settlement and upcoming fairness hearing as directed by the Court. (*See generally* Dancy Decl.) Plaintiffs now ask the Court to grant final approval of the proposed settlement.

The decision about whether to approve the proposed settlement is committed to the sound discretion of the trial judge, and will not be overturned except upon a strong showing of a clear abuse of discretion. *Hanlon*, 150 F.3d at 1026-1027. The Ninth Circuit has set forth a list of non-exclusive factors that a district court should consider in deciding whether to grant final approval, namely: (1) the strength of plaintiffs' case, and

[2] A proposed class action settlement may be approved if the Court, after allowing absent class members an opportunity to be heard, finds that the settlement is "fair, reasonable, and adequate." In making this determination, "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (*quoting Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)); *see also Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982) ("voluntary conciliation and settlement are the preferred means of dispute resolution. This is especially true in complex class action litigation . . . .").

the risk, expense, complexity, and likely duration of further litigation; (2) the risk of maintaining class action status throughout the trial; (3) the amount offered in settlement; (4) the extent of discovery completed, and the stage of the proceedings; (5) the experience and views of counsel; and (6) the reaction of the class members to the proposed settlement. *Id.* at 963 (*citing Molski v. Gleich*, 318 F.3d 937, 953 (9th Cir. 2003)).

These factors, which are discussed below, confirm that the proposed settlement is more than fair, reasonable, and adequate for Class Members. The settlement provides considerable value; Class Members need not bear the risk and delay associated with trial proceedings to obtain these benefits; and the Settlement has been met with substantial support and no opposition from Class Members.

B. The Settlement Was Achieved After Evaluating the Strengths of Plaintiffs' Case and the Risks, Expense, Complexity, and Likely Duration of Further Litigation

In assessing the probability and likelihood of success, "the district court's determination is nothing more than an amalgam of delicate balancing, gross approximations, and rough justice." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982) (internal quotation marks omitted). There is "no single formula" to be applied, but the court may presume that the parties' counsel and the mediator arrived at a reasonable range of settlement by considering Plaintiffs' likelihood of recovery. *Rodriguez v. West Pub. Corp.*, 463 F.3d 948, 965 (9th Cir. 2009).

Plaintiffs were cautiously optimistic about the chances of prevailing at trial on their certified claims. Nevertheless, Plaintiffs recognize that if the litigation had continued, they may have encountered significant legal and factual hurdles that could have prevented the Class from obtaining full recovery for their claims, or perhaps even any recovery (under the worst case scenario). In particular, Plaintiffs' decision to settle was influenced by the following considerations: (i) the strength of Defendants' defenses on the merits; (ii) the risk of losing on any of a number of dispositive motions that could

have been brought between now and trial (e.g., motions to decertify the class, motions for summary judgment, motion to strike the PAGA claims as unmanageable, and/or motions in limine) which may have eliminated all or some of Plaintiffs' claims, or barred evidence necessary to prove such claims; (iii) the risk of losing at trial; (iv) the chances of a favorable verdict being reversed on appeal; and (v) the difficulties attendant to collecting on a judgment.[3]

Moreover, even if certification status had been maintained through trial, Plaintiffs were cognizant of the fact that the outcome was far from certain, and that Defendants were mounting an aggressive defense. Although Plaintiffs believe that they have valid counter-arguments to the defenses, and were cautiously optimistic about their chances of prevailing at trial, this optimism was tempered by the recognition that the odds of a favorable verdict being reversed on appeal are not too remote to ignore. *West Virginia v. Chas. Pfizer & Co.*, 314 F. Supp. 710, 743-44 (S.D.N.Y. 1970) ("[i]t is known from past experience that no matter how confident one may be of the outcome of litigation, such confidence is often misplaced"), *aff'd*, 440 F.2d 1079 (2d Cir. 1971); *Berkey Photo, Inc. v. Eastman Kodak Co.*, 603 F.2d 263 (2d Cir. 1979) (reversing $87 million judgment after trial); *Trans World Airlines, Inc. v. Hughes*, 312 F. Supp. 478 (S.D.N.Y. 1970), modified, 449 F.2d 51 (2d Cir. 1971), *rev'd*, 409 U.S. 363 (1973) (overturning $145 million judgment after years of appeals).

Additionally, early resolutions save time and money that would otherwise go to litigation. Parties' resources, as well as the Court's, would be further taxed by continued litigation. And if this action had settled following additional litigation, the settlement amount would likely have taken into account the additional costs incurred, such that there may have been less available for Class Members. Cost savings is one reason why California policy strongly favors early settlement. *See Neary v. Regents of University of*

[3] Defendant filed for a prepackaged chapter 11 bankruptcy on October 26, 2016. Although, this action was unaffected by the bankruptcy proceedings, Plaintiffs gave due consideration to the fact that if they prevailed at trial, they may have difficulty collecting on a judgment.

California, 3 Cal. 4th 273, 277 (1992) (explaining the high value placed on settlements and observing that "[s]ettlement is perhaps most efficient the earlier the settlement comes in the litigation continuum."). This concern also supports settlement.

In summary, although Plaintiffs and their counsel maintained a strong belief in the underlying merits of the claims, they also acknowledge the significant challenges posed by continued litigation through trial. Accordingly, when balanced against the risk and expense of continued litigation, the settlement is fair, adequate, and reasonable. *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) ("the very essence of a settlement is compromise, a yielding of absolutes and an abandoning of highest hopes").

C. The Settlement Was Reached through Arm's-Length Bargaining in Which All Parties Were Represented by Experienced Counsel

As discussed above, the Settlement is the result of arm's-length negotiations by experienced counsel. The Parties participated in mediation with Jeffrey Ross, a respected mediator of wage and hour class actions. Mr. Ross helped to manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. A mediator's participation weighs considerably against any inference of a collusive settlement. *See In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008); *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure.") At all times, the Parties' negotiations were adversarial and non-collusive.

The Parties were represented by experienced class action counsel throughout the negotiations resulting in this Settlement. Plaintiffs were represented by Capstone Law APC, Bradley/Grombacher LLP, and Law Offices of Santos Gomez. Class Counsel employ seasoned class action attorneys who regularly litigate wage and hour claims through certification and on the merits, and have considerable experience settling wage and hour class actions. Defendants were represented by Buchalter, which operates a

respected wage and hour defense practice.

As this Settlement is the "result of arms'-length negotiations by experienced class counsel, [it is] entitled to 'an initial presumption of fairness.'" *Volkswage*n, 2016 WL 4010049, at *14 (internal citation omitted).

D. Class Counsel Conducted a Thorough Investigation of the Factual and Legal Issues

The Settlement is the product of informed negotiations following extensive investigation by Class Counsel. During this matter's pendency, the Parties thoroughly investigated and researched the claims in controversy, their defenses, and the developing body of law. The investigation entailed the exchange of information pursuant to formal and informal discovery methods, including interrogatories and document requests, and dozens of depositions. In the course of written discovery, Plaintiffs received and analyzed over 80,000 pages of documents, *inter alia*, the following information and evidence with which to properly investigate and evaluate the claims, including: (1) Class Member contact information; (2) Defendants' written policies regarding, e.g., meal and rest period policies; (3) wage statements; and (4) employee time punch records. (Perez Decl. ¶ 8.)

Apart from written discovery, Class Counsel also deposed Defendants' persons most knowledgeable to testify about their labor policies and practices, and also the Class Members who submitted declarations in support of Defendants' opposition to the motion for class certification. Class Counsel also defended Plaintiffs' depositions, the depositions of Class Members who submitted declarations in support of Plaintiffs' motion for class certification, and the deposition of Plaintiffs' expert witness re certification. In total, Class Counsel took or defended more than 40 depositions in this matter. (Perez Decl. ¶ 9.)

After Defendant produced Class Member contact information, Class Counsel interviewed Class Members to determine the extent and frequency of alleged Labor Code violations, to learn more about their day-to-day circumstances giving rise to the

alleged violations, and to obtain declarations in support of Plaintiffs' motion for class certification. (Perez Decl. ¶ 10.)

Overall, Class Counsel performed an exhaustive investigation into the claims at issue, which included: (1) determining Plaintiffs' suitability as putative class representatives through interviews, background investigations, and analyses of their employment files and related records; (2) evaluating all of Plaintiffs' potential claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) interviewing putative Class Members to gather information about potential claims, identify additional witnesses, and obtain declarations in support of the motion for class certification; (5) analyzing Defendants' labor policies and practices; (6) deposing Defendants' persons most knowledgeable and the Class Members who submitted declarations in support of Defendants' opposition to the motion for class certification; (7) defending Plaintiffs' depositions, the deposition of Plaintiffs' expert re certification, and the depositions of Class Member declarants; (8) researching settlements in similar cases; (9) conducting a discounted valuation analysis of claims; (10) drafting the mediation brief; (11) participating in mediation; and (12) finalizing the Settlement Agreement. The extensive document and data exchanges have allowed Class Counsel to appreciate the strengths and weaknesses of the claims alleged against Sunrise and the benefits of the proposed Settlement. (Perez Decl. ¶ 11.)

E. The Settlement Class Has Responded Positively to the Settlement

The Settlement Class' response demonstrates its support for this settlement—only 3 Class Members opted out and only one Class Member objected to the Settlement. (Dancy Decl. ¶¶ 8-9.) Participating Class Members will share the entire Net Settlement Amount and will receive an average payment of $890, with the highest being $2,230. (*Id.* at ¶ 7.) A low number of opt-outs and objections is a strong indicator that a settlement is fair and reasonable. *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1152-53 (2000) (class response favorable where "[a] mere 80 of the 5,454 national class members elected to opt out [(1.5% of the entire Class)]

and . . . [a] total of nine members . . . objected to the settlement); *Churchill Village, LLC v. General Electric*, 361 F.3d 566 (9th Cir. 2004) (affirming settlement approval where 45 of approximately 90,000 notified class members objected and 500 opted out). The Settlement Class' response—both in the low rate of opt-outs and the complete absence of objectors—compares favorably to those cases and warrants final approval.

Likewise, the average Class Member recovery of $890 compares favorably to other wage and hour class action settlements for similar claims on behalf of non-exempt employees. *See*, *e.g.*, *Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of approximately $80); *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately $120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of approximately $120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately $90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately $65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.) (average net recovery of approximately $60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately $35); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately $20).

F. The Proposed PAGA Settlement Is Reasonable

Pursuant to the Settlement Agreement, $20,000 from the Class Settlement Amount shall be allocated to the resolution of the PAGA claim, of which 75% ($15,000) will be paid directly to the LWDA, and the remaining 25% will be added to the Net Settlement Amount. (Settlement Agreement ¶¶ 13, 32.) This result was reached after good-faith negotiation between the parties. Where PAGA penalties are negotiated in good faith and "there is no indication that [the] amount was the result of self-interest at the expense of other Class Members," such amounts are generally considered

reasonable. *Hopson v. Hanesbrands Inc.*, Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24 (N.D. Cal. Apr. 3, 2009); *see*, *e.g.*, *Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 579 (2010) ("[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims.").

The PAGA component of the Settlement is the product of arms'-length negotiations between counsel well versed in the intricacies of PAGA litigation and more importantly, wage and hour employment law. Class Counsel conducted extensive formal and informal investigation and discovery into the claims at issue and have assessed both the strengths and weaknesses of the claims and the risks of continued litigation. Based on the preceding, Class Counsel strongly believe that the PAGA component of the Settlement appropriately reflects the relative strengths of the Parties' respective claims and defenses, as well as the substantial risks presented in continuing the litigation.

G. The Requested Payment to the Settlement Administrator Is Reasonable and Should Receive Final Approval

Plaintiffs request final approval of settlement administration costs in the amount of $25,000. (Dancy Decl. ¶ 10.) CPT has promptly and properly distributed the Class Notice to all Class Members and completed its duties in accordance with the settlement terms and the Court's preliminary approval Order. (*See generally* Dancy Decl.) Accordingly, the $25,000 payment is fair and reasonable and should be accorded final approval along with the rest of the Settlement terms.

H. The Court Should Overrule the Sole Objection to the Settlement

In any litigation involving a large class, an absence of objections would be "extremely unusual." *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 478 (S.D.N.Y.1998) (observing that "[i]n litigation involving a large class, it would be 'extremely unusual' not to encounter objections."); *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1152-53 (2000) (class response favorable where "[a] mere 80 of the 5,454 national class members elected to opt out

[(1.5% of the entire Class)] and . . . [a] total of nine members . . . objected to the settlement); *See In re Cendant Corp. Litig.*, 264 F.3d 201, 234-35 (3d Cir. 2001) (recognizing that low number of objectors and opt-outs strongly favors settlement and that "[t]he vast disparity between the number of potential class members who received notice of the Settlement and the number of objectors creates a strong presumption that this factor weighs in favor of the Settlement").

The true measure of a settlement's reasonableness, therefore, is not whether every class member was satisfied with the settlement, but whether a predominance of class members was satisfied. In *Churchill Village*, for example, the Ninth Circuit affirmed settlement approval where fewer than 50 of approximately 90,000 notified class members objected and 500 opted out. 361 F.3d at 577. "A settlement is not to be deemed unfair or unreasonable simply because a large number of Class members oppose it." *See In re Wash. Pub. Power Supply System Sec. Litig.*, 720 F. Supp. 1379, 1394 (D. Ariz. 1989), *aff'd sub nom.*, *Class Plaintiff v. City of Seattle*, 955 F.2d 1268 (9th Cir. 1992). Here, over 2,000 Class Members received notice of the Settlement, and only one Class Member objected to the settlement. This response provides a strong basis in itself for granting final approval of the settlement. *See Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1291-96 ((9th Cir. 1992); *Churchill Village, LLC*, 361 F.3d at 577; *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F. 3d at 1294-95.

Here, the sole objector claims he is owed "much more" than the $1,671.60 gross payment made available from the Settlement. (*See* Dancy Decl. ¶ 9, Ex. B.) Yet when Class Counsel contacted the objector and asked him how much more he thought he was owed, the objector was unable to say or even provide a rough estimate, insisting instead without foundation that he should just be paid more. (*See* Perez Decl. ¶ 13.)

Because all settlements are the product of compromise, the issue before Court is not whether the settlement could have been for a slightly greater amount, but whether it is fair, adequate, and free from collusion. In this regard, the Court is aware from its supervision of the litigation that the Parties' settlement was reached after adversarial

litigation. Moreover, the fact that the vast majority of Class Members accepted the settlement offer, and elected to remain in the Settlement Class, presents the Court with certain objective positive evidence of the Settlement's fairness. If the objector had idiosyncratic claims, he should have opted out. Indeed, the objector was given a chance to opt-out after the deadline had passed, but he refused to do so. For these reasons, and the reasons set forth throughout this Order, the objection is overruled.

IV. CONCLUSION

The Parties have negotiated a fair and reasonable settlement of a case that provides relief that likely would never have been realized but for this class action. Accordingly, final approval of the Settlement should be granted.

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Respectfully submitted,

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